

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN C. BRYAN,

Petitioner,

v.

WASHOE TRIBAL COUNCIL, *et al.*,

Respondents.

Case No. 3:23-cv-00186-ART-CSD

ORDER

Steven C. Bryan has filed three applications to proceed *in forma pauperis* with his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and under the habeas provision of the Indian Civil Rights Act. (ECF Nos. 1, 5, 11.) However, he has also paid the filing fee (*see* ECF No. 10), so the applications are denied as moot. Bryan states that he was convicted of voluntary manslaughter and is incarcerated at Sheridan Federal Correctional Institution in Sheridan, Oregon. (ECF No. 6 at 2; *see* case no. 3:19-cr-060-MMD.) He alleges that he is an enrolled member of the Washoe Tribe of Nevada and California, and the Washoe Tribal Council has “declared” to banish him and seize his house and land in Carson City, Nevada. (ECF No. 6 at 2.) Having screened the petition under Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254,¹ the Court concludes that the petition contains factual allegations that demonstrate the possibility of constitutional violation.² However, the petition

¹ The Court exercises its discretion to apply the rules governing § 2254 petitions to this § 2241 action. (Rule 1(b) of the Rules Governing Section 2254.)

² Federal courts have exercised jurisdiction to hear certain disputes regarding banishment actions. *See Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d

1 will not be served pending a determination whether Bryan can show cause why
2 the petition should not be dismissed as unexhausted and premature.

3 With his petition, Bryan challenges his banishment or potential
4 banishment from the Washoe Tribe of Nevada and California. (ECF No. 14 at
5 2.)³ He seeks federal habeas review of the Washoe Tribal Court allegedly
6 denying him equal protection and due process. He asks for a stay “on the issues
7 of banishment and seizure of his house and land.” (*Id.*) Bryan indicates that he
8 has filed motions addressing banishment and for a stay of proceedings in
9 Washoe Tribal Court, but the court has not acted on the motions.

10 Generally, this Court is not permitted to adjudicate a federal habeas
11 petition containing unexhausted grounds for relief. *See Rose v. Lundy*, 455 U.S.
12 509, 510 (1982); *Rhines v. Weber*, 544 U.S. 269, 274–75 (2005). It is unclear
13 what if any proceedings have been initiated or may be ongoing in Washoe Tribal
14 Court and what effect those proceedings may have on this federal petition. This
15 Court is not inclined to have this case sit on its docket indefinitely if Bryan may
16 obtain relief in tribal court in the meantime, which would make his federal
17 petition moot.

18 Because of the uncertainty, the Court will give Bryan an opportunity to
19 show cause why this case should not be dismissed as unexhausted and
20 premature. Bryan should in particular explain what is transpiring or has
21 transpired in Washoe Tribal Court relating to his banishment. He must set forth
22 with specifics any motions, orders, relevant decisions, etc.

23 Finally, Bryan filed a motion for documents. (ECF No. 3.) He asks for
24 forms for filing for *in forma pauperis* status, which he no longer needs as he

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26 874 (2d Cir. 1996); *Sweet v. Hinzman*, 634 F.Supp.2d 1196, 1198 (W.D. Wash.
2008).

27 ³ Bryan has filed what he styled as a complaint, ECF No. 1-1 as well as duplicate
28 copies of what he has styled as a habeas petition (ECF Nos. 7, 14.) The Court will
treat the operative petition as being comprised of ECF Nos. 1-1 and 7.

1 paid the filing fee. He also asks for a form for a motion for appointment of
2 counsel. The Court does not have a specific form, and it does not appear that
3 Bryan needs an additional form, because he has filed 3 motions for
4 appointment of counsel in this case. (ECF Nos. 4, 7, 12.) The Court will
5 consider the issue of appointment of counsel after Bryan responds to this order.
6 He also asks for a copy of the Local Rules, which the Clerk will be directed to
7 send.

8 It is therefore ordered that Petitioner's 3 applications to proceed *in forma*
9 *pauperis* **(ECF Nos. 1, 5, 11) are all denied as moot.**

10 It is further ordered that the Petitioner's **motion for documents (ECF**
11 **No. 3) is granted in part.** The Clerk of Court is directed to **send** to Petitioner a
12 copy of the Local Rules for Civil Practice and the Local Rules for Special
13 Proceedings and Appeals.

14 It is further ordered that Petitioner has **45 days** from the date that this
15 order is entered to show cause why his petition should not be dismissed
16 without prejudice as unexhausted and premature. Failure to respond within the
17 time allowed or show good cause for an extension will result in dismissal
18 without further notice.

19 It is further ordered that all assertions of fact made by Bryan in response
20 to this show cause order must be detailed, must be specific as to time and
21 place, and must be supported by competent evidence. Bryan should attach
22 copies of all materials upon which he bases his argument that his petition
23 should not be dismissed as unexhausted and premature.

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25 DATED THIS 25th day of September 2023.

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27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE